

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FRED B. DUFRESNE,

Plaintiff and  
Counter-Defendant,

v.

MICROSOFT CORPORATION, ADOBE  
SYSTEMS INCORPORATED and  
MACROMEDIA, INCORPORATED,

Defendants and  
Counter-Claimants.

Civil Action No. 02-11778 WGY

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**DECLARATION OF JOSEPH J. ALLAIRE IN SUPPORT OF  
MICROSOFT'S MOTION FOR SUMMARY JUDGMENT OF INVALIDITY**

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I, JOSEPH J. "J. J." ALLAIRE, declare as follows:

1. I am a software architect at Microsoft Corporation ("Microsoft").
2. I make this Declaration of my own personal knowledge, and could and would testify competently to the matters set forth herein if called upon to do so.
3. I am the founder of Allaire L.L.C. and Allaire Corporation and I am the original developer of the early versions of Cold Fusion (which had various names, including "Horizon," and "Prometheus," prior to its re-branding as "Cold Fusion"), which I conceived of on or before February 16, 1995 and reduced to practice in the United States. Because I was personally involved with the development of the Cold Fusion products, which involved a significant and important period in my life, I am familiar with both the dates and operation of versions of Cold Fusion from its initial release as a beta product through at least Cold Fusion version 2.0.
4. Attached as Exhibit A hereto is a true and correct copy of the Horizon user manual, together with a cover sheet that identifies the file information from which the user manual was printed (the file was MANUAL1.DOC). I am the author of this manual. As can be

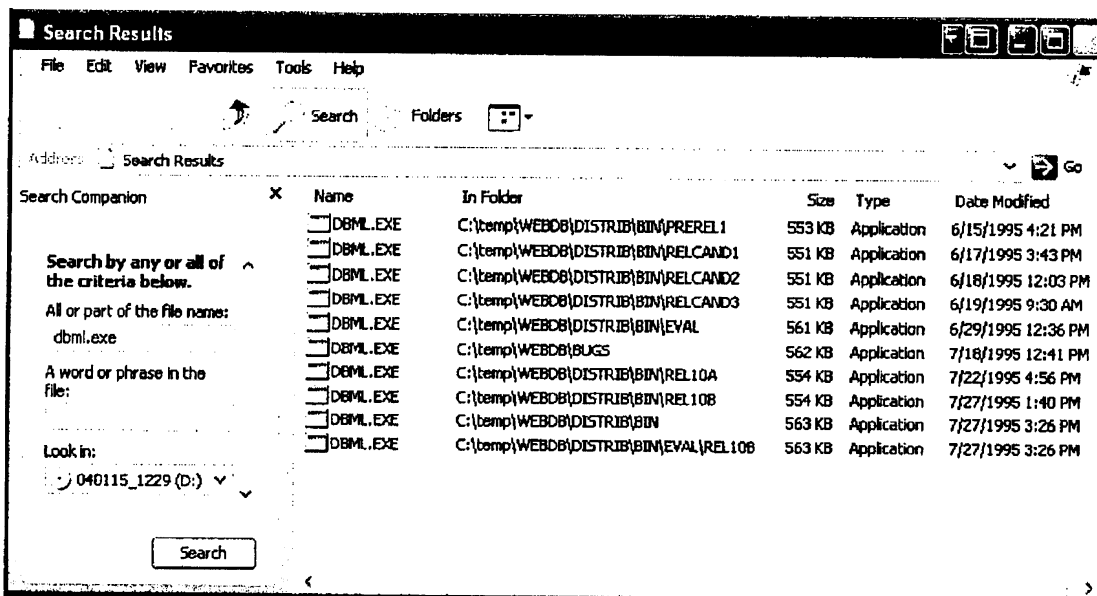
seen in Exhibit A, the electronic copy of the manual, which I have continually maintained in my possession since its creation, was last modified of April 7, 1995. It was my practice at the time to write user manuals after I had completed a successful working copy of my computer software, and I followed that practice with Horizon. Horizon was shared with several colleagues, including my brother Jeremy Allaire, for their own Web page development efforts and so that I could continually update and improve the program. After I gave Jeremy a copy of Horizon in March of 1995, I asked him, and several others I shared the Horizon product with, to sign non-disclosure agreements regarding my development efforts and his testing of Horizon. A true and correct copy of that agreement is attached hereto as Exhibit B. Furthermore, I continued to provide new copies of the product that became Cold Fusion as they were completed to the beta users though the release of Cold Fusion version 1.0.

5. Attached as Exhibit C hereto is a true and correct copy of the Prometheus user manual, together with a cover sheet that identifies the file information from which the user manual was printed (the file was OLDMAN.DOC). I am the author of this manual. As can be seen in Exhibit C, the electronic copy of the manual, which I have continually maintained in my possession since its creation, was last modified of April 21, 1995. It was my practice at the time to write user manuals after I had completed a successful working copy of my computer software, and I followed that practice with Prometheus. Prometheus was shared with several colleagues, including my brother Jeremy Allaire, for their own Web page development efforts and so that I could continually update and improve the program.

6. Attached as Exhibit D hereto is a true and correct copy of the user manual for the second beta version of Cold Fusion, together with a cover sheet that identifies the file information from which the user manual was printed (the file was ~WRL13078.TMP). I am the author of this manual. As can be seen from Exhibit D, the electronic copy of the manual, which I have continually maintained in my possession since its creation, was last modified on May 26, 1995. There was a continuous and diligent development effort between the release of Prometheus and the release of the second beta version of Cold Fusion. Like Prometheus, Cold

Fusion was shared with several colleagues of mine, including my brother Jeremy Allaire, for use in their Web page development efforts and so that I could update and improve the program.

7. Shown in the screen capture below is the file information for various copies of the DBML.EXE file (referred to in Exhibit D at MM 33287), which does the primary processing of Cold Fusion files. The screen captures were taken from electronic copies of files that I have continually maintained in my possession since the dates of the files, and which I understand were produced in this case as production no. MM 0043471. As is shown below, the executables I still have were created beginning on June 15, 1995.



8. Attached as Exhibit E hereto is a true and correct copy of materials from the Cold Fusion version 1.0 product, which includes the user manual followed by photocopies of the actual computer disks shipped with the product and a screen shot showing the file dates for the contents of the computer disks. I was primarily responsible for creating all of these materials. The materials at Exhibit E were copied from what is often called a "trophy" version of my computer software: I saved the product in its original packaging for posterity once the product was commercially released, by July 3, 1995, and it has sat, until this case, for several years in a storage facility I controlled in the Boston area. Cold Fusion version 1.0 is the first formal commercial release of my computer software sold to the public. There was a continual and non-


stop development effort by me, in particular, to work on this technology. Cold Fusion version 1.0 improved upon Prometheus by adding additional special-purpose tags for web page development. The file date on the installation program on the computer disks that accompanied the Cold Fusion 1.0 product is June 28, 1995.

9. Attached as Exhibit F are publicly available Internet newsgroup postings I made in 1995 announcing the availability of the Cold Fusion product. The first posting was made on July 3, 1995, the second on July 5, 1995, and the third on July 10, 1995.

10. I was closely and actively involved in the development and release of ColdFusion 2.0, which was, of course, based upon the earlier versions of Cold Fusion that I developed. The manner in which Cold Fusion 2.0 processed files did not differ in any material respect from the prior versions of Cold Fusion, including Horizon and Prometheus, other than its addition of more special-purpose tags and other unrelated features.

11. The development of Cold Fusion, from its conception through its formal public and commercial release as version 1.0 on July 10, 1995, was a period constant and virtually non-stop development for me. I worked on the product constantly, sometimes turning out multiple versions in a single day.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed at Seattle, Washington, this 25 day of May, 2007.

  
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Joseph J. Allaire